

**UNITED STATES OF AMERICA  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

**Broadcast Localism Notice Of Inquiry)      FCC Docket 04-233**

**Broadcast Localism Task Force                      )      FCC Docket RM-10803  
(Later consolidated  
with Docket 04-233)**

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**MOTION TO ACCEPT LATE-FILED WRITTEN COMMENTS,  
PLUS THE LATE-FILED WRITTEN COMMENTS THEMSELVES,  
BY DON SCHELLHARDT, ESQUIRE**

I am Don Schellhardt, Esquire: an attorney, specializing in Government Relations advocacy and family law, and a writer. Doing Business As SCHELLHARDT ADVOCACY SERVICES, and/or acting as the former President of THE AMHERST ALLIANCE and/or as the former Vice President of THE NATIONAL ANTENNA CONSORTIUM, and/or acting in other capacities, I have made over 200 filings with the FCC since 1998. The goal of most of these filings has been the preservation, and expansion, of diversity in media content *and* ownership.

This record includes filings, made on behalf of THE AMHERST ALLIANCE, and others, in FCC Dockets 04-233 (the Broadcast Localism Task Force) and RM-10803 (the Broadcast Localism Task Force, now consolidated with Docket 04-233).

This latest filing is made on behalf of myself, as an individual.

**First:** I move for acceptance of these Written Comments, despite their submission after the filing deadline for Written Comments in FCC Docket 04-233. The justification for this requested waiver of normal procedures is the fact that the Written Comments concern developments which occurred after the filing deadline.

**Second:** These Written Comments are being submitted as a means for transmitting my February 8, 2005 letter to the Commission's Enforcement Bureau. The letter, which is Attached, conveys a complaint against Emmis Communications for the repeated airing, over an 8-day period in mid-January, of a production entitled "The Tsunami Song". The song gleefully describes the death of Asians and Africans in the recent tsunami, referring to the victims as "chinks" and "bitches".

My letter also requests that a major fine, exceeding the recent fine for airing of Janet Jackson's "wardrobe malfunction", be imposed on Emmis Communications.

These developments are directly relevant to FCC Dockets 04-233 and RM-10803 because those Dockets explicitly include a re-examination of whether large, national or international broadcasters are acting responsibly under the *status quo* -- which rests largely on self-regulation and presumed positive responses to "market forces".

The recent actions and inactions of Emmis Communications constitute yet another piece of powerful evidence that the answer to the Commission's question is "No".

**Don Schellhardt, Esquire**  
**FCC Dockets 04-233 and RM-10803**  
**February 9, 2005**  
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**Respectfully submitted,**

**Don Schellhardt, Esquire**  
**President, SCHELLHARDT ADVOCACY SERVICES**  
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**San Francisco, CA 94118**  
**[pioneerpath@hotmail.com](mailto:pioneerpath@hotmail.com)**

**Dated:** \_\_\_\_\_  
**February 9, 2005**

**I hereby certify, on February 9, 2005, that copies of this document are being sent to:**  
**(1) John R. Smulyan, Chairman and CEO, Emmis Communications, Indianapolis,**  
**Indiana and (2) Barry Mayo, General Manager, “Hot 97” WQHT-FM, New York,**  
**NY.**

\_\_\_\_\_  
**Don Schellhardt, Esquire**

## **SCHELLHARDT ADVOCACY SERVICES**

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February 8, 2005

William Davenport  
Chief, Investigations and Hearings Division  
Enforcement Bureau  
FEDERAL COMMUNICATIONS COMMISSION  
445 12<sup>th</sup> Street S.W.  
Washington, DC 20554

### **RE: Request For Major Fine Against EMMIS COMMUNICATIONS**

Dear --:

I am Don Schellhardt: a Government Relations and family law attorney, and a writer. I am also a co-founder of THE AMHERST ALLIANCE: a Net-based, nationwide citizens' advocacy group for greater diversity in media ownership and content. Amherst is now led by Stephanie Loveless of Ferndale, Michigan ([jamrag@glis.net](mailto:jamrag@glis.net)), but I led the group from 1998 to 2000, and again from 2002 through 2004. Acting on behalf of Amherst, other clients and/or myself as an individual, I have filed more than 200 documents with the FCC since 1998.

In this letter, at this time, I speak for myself alone. Please consider this letter a formal complaint against Emmis Communications, for repeatedly airing programming that can only be called abusive, *and also* a request for a major fine.

**Don Schellhardt, Esquire**  
***Complaint Against EMMIS COMMUNICATIONS,***  
***Plus Request For A Major Fine***  
**February 8, 2005**  
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Having become in January a graduate student at the University of San Francisco, pursuing at night a Master of Arts in Asia Pacific Studies (MAPS) degree, I recently read in ASIAN WEEK reports of outraged reactions -- among Asian Americans, and among friends of basic human dignity in general -- to incredible programming, aired repeatedly over WQHT-FM of New York City and other outlets of Emmis Broadcasting (an arm of Emmis Communications).

The programming involved "The Tsunami Song", a "parody" of the song "We Are The World". It was aired on a radio show entitled "Miss Jones In The Morning". Thereafter, it was reportedly re-broadcast by Emmis Broadcasting on multiple occasions during the period of January 13 to January 21.

A partial presentation of the song's lyrics is all that is needed to justify substantial fines against Emmis Communications. For this presentation, I quote in part from last week's "Emil Amok" column by Emil Guillermo, entitled "Condemning The Devil In Jones" (ASIAN WEEK, February 3, 2005):

Go ahead, you be the judge and jury:  
[www.hiphopmusic.com/archives/000760.html](http://www.hiphopmusic.com/archives/000760.html)

If you can't wait to go online, here's a sampling of the song's lyrics:

*"All at once you could hear the screaming chinks  
"And no one was safe from the wave.  
"There were Africans drowning,  
"Little Chinamen swept away.  
"You could hear God laughing, 'Swim, you bitches, swim.'  
"So now you're screwed, it's the tsunami.  
"You better run or kiss your ass away, go find your mommy.  
"I just saw her float by, a tree went through her head  
"And now the children will be sold to child slavery ... "*

Go ahead, say it: "What were they thinking?"

The use of the term "Chinamen" is startling [because the tsunami struck well to the south of China]. Then, when it comes to bigotry toward any Asian or Asian American, to the ignorant we are all a bunch of chinks.

According to a different article in the same issue of ASIAN WEEK, an un-bylined story entitled “Stop The Song”, by February 3 more than 45,000 people had signed a petition on [www.asianmediawatch.net/missjones/index.html](http://www.asianmediawatch.net/missjones/index.html), seeking a public apology and cancellation of “Miss Jones In The Morning”. The count is now 57,000. The ASIAN MEDIA WATCH organization, led by founder Kai Yu, has launched a protest rally in New York City. Meanwhile, as of February 3, more than 30 other organizations, and 8 elected officials, had endorsed the protest. The number has now grown to include, among others, House Minority Leader Nancy Pelosi (D-CA) and Representative Mike Honda (D-CA), a candidate for National Democratic Committee Vice-Chairman.

Further: Coca Cola, Toyota, McDonald’s, Sprint and Reebok have already pulled their advertising from WQHT-FM, while the continuing protest campaign attempts to persuade the remaining advertisers to follow suit.

In response, the crew of the morning show has been “suspended indefinitely”, while one of them has been fired (for allegedly saying to an Asian American employee of the station: “I’m gonna start shooting Asians”).

However, to the best of my limited personal knowledge, Emmis Communications, despite WQHT-FM’s one firing and seven suspensions, has still not publicly apologized for airing “The Tsunami Song”. To date, it has had 24 days to do so.

At the same time -- again, to the best of my limited personal knowledge -- no protestor of “The Tsunami Song” has yet filed with the Commission a formal request for a very large fine against Emmis Communications. With this letter, that apparent situation has been corrected.

*The fine against Emmis Communications should exceed the recent fine for airing of Janet Jackson’s “wardrobe malfunction”.*

Such a fine is necessary to drive home the message, to Emmis Communications, that it should not abuse the publicly owned airwaves again. While the advertising lost to WHQT-FM has presumably taken a toll on Emmis Communications’ overall revenues, it must be recalled that WHQT-FM is only one of the company’s 25 U.S. radio stations and 15 U.S. television stations. The FCC must add its own major fine in order to “send a message” at the address where it will receive the most attention: Emmis Communications’ bottom line.

**Don Schellhardt**  
***Complaint Against EMMIS COMMUNICATIONS,***  
***Plus Request For A Major Fine***  
**February 8, 2005**  
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A major fine by the FCC will also send a vital message to the general public: that the Commission is serious, *and consistent*, in its efforts to hold broadcasters more accountable for decisions that abuse the airwaves. After all, the FCC has just imposed a record fine on broadcasters who allowed a glimpse of Janet Jackson's breast, even though they reacted to block the view within seconds. Surely, the FCC should impose an even larger fine on broadcasters who knowingly aired content that many Americans find far more offensive -- and then kept on airing it for 8 days.

Respectfully submitted,

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**CC: FCC Chairman Michael Powell**  
**FCC Commissioner Kathleen Abernathy**  
**FCC Commissioner Jonathan Adelstein**  
**FCC Commissioner Michael Copps**  
**FCC Commissioner Kevin Martin**

**FCC Docket 04-233 (Broadcast Localism NOI)**

**House Minority Leader Nancy Pelosi (D-CA)**  
**(Don Schellhardt's Representative in Congress)**

**Emil Guillermo, Columnist, ASIAN WEEK**  
**Ted Fang, Editor, ASIAN WEEK**  
**Kai Yu, Founder, ASIAN MEDIA WATCH**  
**Stephanie Loveless, President, THE AMHERST ALLIANCE**

***Jeffrey M. Smulyan, Chairman and CEO, Emmis Communications***  
***Barry Mayo, General Manager, WQHT-FM***